

REMARKS

Claims 1-22 are pending in the present application.

The Examiner has required election in the present application between:

Group I, claims 1-6, drawn to Form C of N-(3-cyano-4-methyl-1H-indol-7-yl)-3-cyanobenzenesulfonamide;

Group II, claims 7-16, drawn to process of making Form C N-(3-cyano-4-methyl-1H-indol-7-yl)-3-cyanobenzenesulfonamide. Further election of a single species (i.e. exact process conditions including, for example, solvent, heating temperatures, etc.); and

Group III, claims 17-22, drawn to Form D of N-(3-cyano-4-methyl-1H-indol-7-yl)-3-cyanobenzenesulfonamide.

[The Examiner should note that Claims 17-22 are actually directed to **Form A**.]

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, Claims 1-6.

There are several bases for the traversal. First, the present Examiner should note that the Examiner during the International phase recognized the unity of invention. That is, there was no basis for lack of unity of invention found by the Examiner during the International phase.

More specifically, the Examination during the International phase correctly found the same or corresponding special technical feature in common among the various groups. In this regard, the present Examiner is invited to review the International Preliminary Report on Patentability. As stated in Box No. V2., the Examiner recognized during the International Phase the following:

“the C crystals and the A crystals, which are specific crystalline forms of the compound from the present application, cannot be considered to have been obvious...”

Second, patent Document 1, which is relied upon by the present Examiner to support his position, does not disclose or suggest the presently claimed invention. For example, as recited in paragraph [0010] on pages 7-8 of the present specification,

“The crystals (Form C) of the invention are anhydrate crystals consisting of a single crystal from of the compound (5b), and they are crystals characterized by having....These characteristic peaks in the powder X-ray diffraction are not observed with the crystal obtained by the production process disclosed in Patent document 1...”

Accordingly, Applicants are not claiming what was disclosed in the prior art. Thus, the Examiner’s reasoning for the restriction is factually incorrect and the resulting determination of lack of unity of invention is without basis and must be withdrawn. This point was clearly recognized by the Examiner during the International Phase. Therefore, the Examiner must therefore follow Rule 475 and consider all of the claims at the same time.

Alternatively, the Examiner should rejoin the process claims upon allowance of the elected product claims. See MPEP “821.04(b) Rejoinder of Process Requiring an Allowable Product [R-5].”

Application No.: 10/571,279

Docket No.: 1056-0133PUS1

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Marc S. Weiner, Registration No. 32,181 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: **FEB 15 2008**

Respectfully submitted,

By 

Marc S. Weiner

Registration No.: 32,181

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant